IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION No. 11378 of 1999

Between:

Poosarla Atchutramaiah Gupta, S/o. Kamaraju
R/o. Plot No.105, Sector-4, MVP Colony,
Visakhapatnam - 17.

..... PETITIONER

AND

1 The District Registrar & Collector under the India Stamp Act
Visakhapatnam.
2 The Sub-Registrar, Under the Indian Stamp Act.,
Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ, order or Direction more particularly one in the nature Writ of Certiorari call for the records pertaining to the Demand Notice No.2118/47A/98, Dt.17.3.99 on the file of the 1st respondent and quash the same as without jurisdiction, arbitrary and illegal, consequently direct the respondent to deliver the duly Registered Sale Deed Dt.25.11.91 (P.No.1859/91) to the Petitioner in the interest of Justice.

Counsel for the Petitioner : Mr.G.RAMA GOPAL

Counsel for Respondents : G.P. FOR REVENUE

The Court made the following :

ORDER:

Challenging the demand notice dated 17.3.1999 issued by the first respondent directing the petitioner to pay a sum of Rs.24,400/- towards deficit stamp duty, the present writ petition is filed.

The petitioner states that the Visakhapatnam Urban Development Authority, Visakhapatnam allotted a house plot admeasuring 307 sq.yards to the petitioner vide its proceedings dated 12.11.1984. The petitioner paid sale consideration of Rs.31,621/- and also security deposit of Rs.3,070/- to the VUDA. Thereafter, VUDA executed a Sale Deed dated 25.11.1991 on stamp paper worth Rs.4,500/- and presented the same before the second respondent for registration and the second respondent gave the pending registration number. The petitioner states that to his surprise, first respondent issued a demand notice dated 9.11.1998 and thereafter the impugned demand notice dated 17.3.1999 demanding the alleged deficit stamp duty and registration fee of Rs.24,400/-.

The learned counsel for petitioner submits that by virtue of proviso to sub-section (6) of Section 47A of A.P. Amendment Act 8 of 1998, if an instrument is presented before the registration authority, the sale consideration shown in the instrument shall be the market value of the property. The learned counsel also submits that the second respondent is under statutory obligation to register the instruments submitted before him in accordance with the Indian Stamp Act and the Indian Registration Act. He also submits that for the delay committed by the respondents in registration of the document, petitioner cannot be penalized.

On the other hand, in the counter affidavit filed by the respondents, it is stated that the A.P. Amendment Act came into force w.e.f. 1.5.1998 while the impugned document is dated 25.11.1991 and even the documents executed by a statutory authority like VUDA, the effect of A.P. Amendment Act No.8 of 1998 is prospective and not retrospective and therefore, the petitioner is not entitled to invoke the provisions of A.P. Amendment Act 8 of 1998.

Proviso to Sub-Section (6) of Section 47A of Indian Stamp Act, 1899 reads as under:

> "For the purposes of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument referred to in

sub-section (1).

> Provided that in respect of instruments executed by or on behalf of the Central Government or the State Government or any authority or body incorporate by or under any law for the time being in force and wholly owned by Central/State Government, the market value of any property shall be the value shown in such instrument".

In view of the same, the contention of the respondents that in view of the amendment to A.P. Amendment Act 8 of 1998 the petitioner is liable to pay the stamp duty as per the law in operation as on the date of registration cannot be accepted.

Having regard to the facts and circumstances of the case, I am of the view that for the delay caused by the respondents in the registration of the document presented by petitioner, petitioner cannot be penalized and therefore, the impugned demand notice is liable to be set aside.

The writ petition is accordingly allowed setting aside the impugned demand notice dated 17.3.1999 issued by the first respondent directing the petitioner to pay a sum of Rs.24,400/-. No order as to costs.

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E.DHARMA RAO, J

Date: 14.6.2005

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To

1 The District Registrar & Collector under the India Stamp Act Visakhapatnam.
2 The Sub-Registrar, Under the Indian Stamp Act., Visakhapatnam.

3 Two CCs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

4 Two CD copies.